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EX PARTE OR LATE FILED

May 5, 1998

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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Re: EX PARTE - (CC Docket No. 94-129) - Policy and Rules
Concerning Unauthorized Changes of Consumer's Long
Distance Carriers

Dear Ms. Salas:

Today, I met with Kyle Dixon, Legal Advisor to Commissioner Michael K. Powell. During this meeting we discussed matters relative to AT&T's recently filed comments.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Spurlock".

Attachment

cc: Mr. K. Dixon

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A Neutral Third Party Entity Should Administer The Carrier Selection and Freeze Processes

The local exchange carriers were given control over the carrier selection and change process in 1984 based on a different industry model.

The ILECs administered the PIC process for determining customer choice of competing long distance carriers. The assumption at the time was that the incumbent LECs were neutral as to that selection based on the Line of Business restrictions and equal access obligations of the 1984 Modification of Final Judgment.

However, the industry has changed since 1984 and the ILECs are no longer neutral parties. LECs can and are abusing their control over the carrier selection and change process. Some LECs are abusing their control over the PIC Freeze process.

A neutral third party now should administer these processes.

- A neutral third party should be designated to administer ALL carrier selection changes and freezes for ALL telecommunications services (exchange service, intraLATA toll, interLATA toll).
- Interim restrictions should be placed on LEC abuses until the neutral third party system is in place.

Change is Required

Local exchange carriers today:

administer carrier selections by taking orders from customers who want to choose their local, intraLATA and/or interLATA carrier;

implement virtually all residential customer carrier selections for local, intraLATA or interLATA service in local switches;

direct residential customers who believe they have been slammed with respect to their interstate, local toll, or local service; and

adjudicate carrier selection disputes by choosing when to reassign a customer as a result of a PIC Dispute and choosing when to charge the alleged “slammer” for that reassignment.

- As telecommunications competition is introduced in local markets, local telephone companies will not be able to administer neutrally such carrier selection matters – matters that directly affect the viability of their potential or actual competitors.

ILEC Abuses Are Escalating

Abuses by ILECs of their control over carrier selection and freeze processes are escalating:

- ILECs use their domination over PIC freezes to market to customers who seek to change their carrier to AT&T.

ILECs send out PIC freeze solicitations to coincide with a customer's selection of the ILEC's own intraLATA or interLATA toll service.

ILECs use their knowledge of customers' recent carrier changes to market to such customers ("come back to us.") They have encouraged some customers to indicate that their carrier selection was a slam. ("If you tell us that you did not approve your recent carrier change, we will change you back at no cost.")

ILEC Abuses Are Documented

A listing of abuses by Bell Atlantic (then NYNEX) during two months of 1997 is illustrative. These abuses occurred during three-way calls involving customers, AT&T personnel and Bell Atlantic personnel for the purpose of unfreezing customer accounts and to effectuate a PIC change to AT&T for intraLATA toll calling. The abuses occurred despite a New York PSC order barring marketing by the ILEC during such calls and requiring that the ILEC permit three-way calls. Examples include:

“LEC rep told customer that NYNEX also offered \$.06 per minute and apologized to the customer for charging her \$.12 per minute. LEC rep said she would go ahead and make the change [in NYNEX plans]; there was no need for the customer to switch to AT&T. Customer did not switch.”

“LEC rep offered an unlimited local and regional calling plan. Customer accepted it and did not switch.”

“Called NYNEX to switch LD service {NYNEX} Rep told customer he would be billed twice for his regional calls.”

“LEC refused to switch regional and LD even though customer gave SS#. LEC told customer he would have to put it in writing and gave him an address to write.”

“LEC rep asked me to drop off the line – when I asked why she giggled and said she doesn’t need me on the line to discuss customer account. I asked if she would process it – she said of course if that’s what the customer wants.”

“LEC rep offered \$0.05 per minute – said AT&T rates were higher than NYNEX.”

"LEC rep verified that customer wanted to switch regional calls. Customer said yes...
[LEC rep] said he wouldn't benefit from switch. Customer did not switch."

"LEC rep said they were instructed not to talk to customer with AT&T on the line. Rep
ended the call and said she would call the customer back to switch."

"LEC Rep (Mrs. Parker) told customer she must send letter because she has a freeze on
her account."

"LEC rep (Mrs. Carlton) said NYNEX had a conflict with AT&T so the customer would
have to call back himself."

A Neutral Third Party Should Administer Carrier Selections and Freezes for All Telecommunications Services

The increasing competitive overlap between ILECs and other carriers requires the ILECs to move out of the combined role of judge, jury and defendant when it comes to carrier selections and freezes.

A neutral third party is needed for ALL telecommunications services – local, intraLATA and interLATA – if there is to be any chance for competition to succeed.

The third party should be put in place now before the problems become worse with the development of competition.

How Would a Neutral Third Party System Work?

There are a number of analogs for setting up a third party to facilitate greater customer security and growing competition: e.g., the 800 number portability and local number portability systems.

Industry should set up, fund and control a neutral third party under guidelines established by the FCC.

The neutral third party would receive and process all customer requests for a carrier selection change or a carrier selection freeze. The ILECs' continued technical role would be simply to implement required changes in local networks upon receipt of a direction from the neutral third party.

The neutral third party could implement basic security measures to guard against slamming and similar abuses (e.g., use security passwords).

The extent of the neutral third party's direct interaction with end user customers would have to be determined based on industry processes set up to verify and process customer changes.

- The third party should not result in any additional costs for end users because its functions are performed today by ILECs who charge for carrier selection changes.

Interim Measures

Until a neutral third party system is installed, the FCC should severely restrain the ability of ILECs to abuse their carrier selection and carrier freeze roles – and thus disadvantage competitive carriers.

The carrier selection and freeze functions should be walled off from any ILEC marketing functions.

The ILEC's competitors should be granted capabilities equal to those of the ILEC and its subsidiaries to change, freeze and unfreeze customer PICs and PLOCs.

ILECs should not be permitted to freeze customers' local or intraLATA toll choices until after the PUC has determined that the relevant market is fully competitive.